

TERMS AND CONDITIONS FOR THE SUPPLY OF SOFTWARE

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Contract.

Additional Services: means the additional services to be delivered by IHM as a part of the Contract as outlined in the Order Form.

Affiliate: includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

Commencement Date: means the commencement date of the Contract as shown on the Order Form.

Conditions: means these terms and conditions for the supply of the Software and the Schedule which are available online at www.inhousemanager.com as amended from time to time in accordance with the Contract.

Contract: means the Order Form and these Conditions.

Customer Data: the data inputted by the Customer, its employees, contractors and agents or any party acting on its behalf, the Users and IHM on Customer's behalf for the purpose of using the Software and the Portal or facilitating the Customer's use of the Software or the Portal.

Documentation: means any documents made available to the Customer by IHM from time to time which relates to the use of the Software and/or the Portal.

Export Control Laws: shall have the meaning outlined in clause 8.1 (Export).

Extended Term: shall have the meaning outlined in clause 14.1 (Commencement, Duration and Termination).

Fees: the fees payable by the Customer to IHM under clause 6 (Fees) including fees for Additional Services or fees due under the Mobilisation Plan and the Software Fees.

Food Information Conditions: means the conditions outlined in the Schedule.

IHM: means Inhouse Manager Limited, a company incorporated in Scotland under the Companies Acts (Company Number SC144362) and having its registered office at Steuart Road, Bridge Of Allan, Stirling, FK9 4JY.

Initial Payment: shall have the meaning outlined in clause 6.1 (Fees).

Initial Term: means the initial term of the Contract as outlined in the Order Form.

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Mandatory Policy: means IHM's privacy policy which may be accessed online at www.inhousemanager.com/privacy as such policy may be amended from time to time in the sole discretion of IHM.

Mobilisation Plan: a plan agreed by the parties for the launch and mobilisation of the Software and Portal as well as initial on-site support and training which is subject to IHM's final approval.

Multi Year Discount: means a discount on the Software Fees as outlined in the Order Form and always subject to the conditions outlined in the Order Form.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by IHM in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Order Form: means the order form between IHM and the Customer for the provision of Software by IHM.

Portal: means the web application related to the Software to manage the ordering of the food and catering supplies.

Schedule: means the schedule to these Conditions.

Software: the computer program(s) listed in the Order Form and any Maintenance Release which is acquired by the Customer during the subsistence of the Contract.

Software Fees: means the fees payable for the Software as outlined in the Order Form.

User: those employees of the Customer who are authorised by the Customer to access the Software and the Portal.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

1.2 **Holding company** and **subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.3 Clause headings shall not affect the interpretation of these Conditions.

1.4 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 In case of ambiguity between any provision contained in these Conditions and any provision in the Order Form, the provision contained in the Order Form shall take precedence.

- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.7 References to clauses and the Schedule are to the clauses and the Schedule of these Conditions; references to paragraphs are to paragraphs of the Schedule to these Conditions.
- 1.8
- 1.9 The Schedule forms part of these Conditions and shall have the same force and effect as if set out in the body of these Conditions and references to these Conditions shall include the Schedule.

2. MOBILISATION

- 2.1 IHM shall deliver (and install on the Customer's equipment where the Customer orders this Additional Service as indicated in the Order Form) one copy of the Software to the Customer at the Customer's Business Address stated in the Order Form within 30 days of the Customer paying the Initial Payment in accordance with clause 6.1 (Fees). Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 2.2 Following the Customer's payment of the Initial Payment, IHM and the Customer shall agree the Mobilisation Plan and the parties shall carry out mobilisation activities according to the timelines as outlined in the Mobilisation Plan.

3. LICENCE AND RIGHT TO ACCESS THE PORTAL

- 3.1 In consideration of the Fee paid by the Customer to IHM in accordance with the Contract, IHM:
- (a) grants to the Customer a non-exclusive licence for the duration of the Contract as defined in the Order Form to use the Software and any Documentation solely for the purpose of the Customer managing its purchasing requirements for food and catering supplies; and
 - (b) grants the Customer a non-exclusive and non-transferable right to permit the Users to access the Portal and the Software during the term of the Contract and subject to the terms of the Contract and solely for the purpose of the Customer managing its purchasing requirements for food and catering supplies.
- 3.2 In relation to scope of use:
- (a) for the purposes of clause 3.1(a), use of the Software and the Portal shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee, agent, contractor or other representative of the Customer).
 - (b) the Customer may not use the Software, the Portal or the Documentation other than as specified in clause 3.1, clause 3.2(a) and clause 3.2(d) without the prior written consent of IHM, and the Customer acknowledges that additional fees may be payable on any change of use approved by IHM.
 - (c) except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software of the Portal in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless IHM is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request IHM to carry out such action or to provide such information (and shall meet IHM's reasonable costs in providing that information) before undertaking any such reduction.

- (d) the Customer shall not allow its employees, agents or independent contractors who have not been allocated personal user names and passwords to access the Portal or the Software.
- (e) IHM shall use commercially reasonable endeavours to make the Portal available 24 hours a day, seven days a week, except for:
 - (i) planned maintenance which has been notified to the Customer in advance;
 - (ii) any unscheduled or urgent maintenance which IHM reasonably requires to carry out; and
 - (iii) the occurrence of any force majeure events in terms of clause 21 (Force Majeure).
- (f) the rights granted in clause 3.1 are granted to the Customer only and shall not be considered granted to any Affiliate of the Customer.

3.3 The Customer may not use any such information provided by IHM or obtained by the Customer during any such reduction permitted under clause 3.2(c) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4 The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of the Contract in whole or in part; or
- (b) allow the Software to become the subject of any charge, lien or encumbrance; or
- (c) deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of IHM.

3.5 IHM may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Contract, provided it gives written notice to the Customer.

3.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.7 Notwithstanding clause 7 (Confidentiality and Publicity), a party assigning any or all of its rights under the Contract may disclose to a proposed assign any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment.

3.8 The Customer shall:

- (a) keep a complete and accurate record of the Customer's copying and disclosure of the Software and the Users of the Software and the Portal, and produce such record to IHM on request from time to time;
- (b) notify IHM as soon as it becomes aware of any unauthorised use of the Software or the Portal by any person; and
- (c) pay for broadening the scope of the licences granted under these Conditions to cover the unauthorised use, an amount equal to the fees which IHM would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 6.5 (Fees), from such date to the date of payment.

3.9 The Customer shall permit IHM to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the Contract, for the purposes of ensuring that the Customer is complying with the terms of the Contract, provided that IHM provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

4. MAINTENANCE RELEASES

IHM will provide the Customer with all Maintenance Releases generally made available to its customers. IHM warrants that no Maintenance Release will adversely affect the then existing

facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

5. THE PORTAL

5.1 IHM reserves the right to withdraw and/or modify the Portal where there are technical or legal reasons to do so.

5.2 Usernames and passwords

- (a) IHM shall allocate the Customer privileges to create user names and passwords for the Users to allow access to the Portal. All usernames and passwords are personal to each User and the Customer ensures these shall be kept confidential.
- (b) IHM may withdraw any User privileges, username and password and allocate a new username and password to any User where there is reason to believe such privileges or login details may be used in a manner not expressly authorised by these Conditions or where IHM deems it necessary to do so in its reasonable opinion.
- (c) IHM shall change the username(s) and password(s) where the Customer requests these to be changed and reserves the right to withdraw the right to access the Portal where in its opinion there are reasonable grounds for believing the Customer has not complied or is not complying with the Contract or if the Contract or any part of it is terminated or suspended for any reason.

5.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Portal and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify IHM.

Activities not permitted

5.4 The Customer shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Portal that:

5.5 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, discriminatory or racially or ethnically offensive;

- (a) facilitates illegal activity; or
- (b) is otherwise illegal or causes damage or injury to any person or property;

and IHM reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Portal or to any infringing material where the Customer breaches this clause 5.

5.6 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between IHM and the Customer and except to the extent expressly permitted by the Contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Portal and/or Documentation (as applicable) in any form or media or by any means.

5.7 The Customer shall not:

- (a) access the Portal or use the Documentation in order to build a product or service which competes with the Portal or the Software; or
- (b) subject to assignments permitted under clause 3.4(a) (Licence and Right to Access the Portal), licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or make the Portal available to any third party except the Users authorised under these Conditions; or
- (c) attempt to obtain, or assist third parties in obtaining, access to the Portal and/or Documentation other than as expressly provided in the Contract.

6. FEES

6.1 The Customer shall pay the Software Fees in advance and in full and cleared funds and without set-off or deduction either monthly, quarterly, annually or in respect of the entire Initial Period, as outlined in the Order Form. A Multi Year Discount (if applicable) may be applied to the Software Fees as outlined in the Order Form. The first payment to be made by the Customer consists of:

- (a) the first instalment of the Software Fees taking into account the payment intervals as outlined in the Order Form; and
- (b) any fees in respect of the Additional Services which have been selected by the Customer as outlined in the Order Form (if applicable)

(such payment referred to as **Initial Payment**). The Initial Payment shall be paid by the Customer no later than thirty (30) days following the signature of the Contract and the Customer shall pay this in full and cleared funds and without set-off or deduction using the payment method indicated in the Order Form. No Software, Portal access or Documentation will be provided until the Initial Payment has been paid in full.

6.2 Following the Initial Payment in clause 6.1, IHM shall be entitled to render the following invoices:

- (a) for any subsequent Software Fees in advance at such intervals as outlined in the Order Form; and
- (b) for any other sums due under the Contract (if applicable) on a weekly basis; and
- (c) for any Additional Services to be rendered (if not already paid for as a part of the Initial Payment) on a weekly basis and in advance of such Additional Services being rendered by IHM

and the Customer shall pay the invoices in accordance with these Conditions.

6.3 Additional fees will be payable for any Additional Services to be delivered by IHM. Such Additional Services may be subject to separate terms and conditions which the Customer is required to accept.

6.4 All sums payable under the Contract are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

6.5 If the Customer fails to make any payment due to IHM under the Contract by the due date for payment, then, without limiting the IHM's remedies under clause 14 (Commencement, Duration and Termination):

- (a) the Customer shall pay interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- (b) IHM may suspend the Customer's access to the Software and/or Portal and suspend the performance of any of IHM's obligations (including the Additional Services) under the Contract.

6.6 The Customer shall pay all invoices in full and cleared funds and without set-off or deduction within 30 days of the date of any such invoice using the payment method indicated in the Order Form.

6.7 Where the Customer pays the Software Fees in advance in respect of the entire Initial Term and the Contract is extended in accordance with clause 14.1 (Commencement and Duration), then

the Software Fees shall be payable annually in advance in respect of each Extended Term unless the parties agree otherwise in writing.

7. CONFIDENTIALITY AND PUBLICITY

7.1 Each party shall, during the term of the Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of the Contract) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

7.2 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

8. EXPORT

8.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

8.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

9. CUSTOMER DATA

9.1 The Customer has read and agrees with the Mandatory Policy.

9.2 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

9.3 IHM does back up the Customer Data on a daily basis, and backups are retained for 30 days. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be to restore such lost or damaged Customer Data from the latest back-up of such Customer Data. IHM shall not be responsible for any loss, destruction, alteration or disclosure of the Customer Data caused by any third party.

9.4 The Customer agrees not to upload to the Portal or provide to IHM in any other manner any Personal Data (as that term is defined under the Data Protection Act 1998).

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

- (a) provide IHM with:
 - (i) all necessary co-operation in relation to the Contract; and

- (ii) all necessary access to such information as may be required by IHM for IHM to be able to perform its obligations under the Contract;
- (b) comply with all applicable laws and regulations with respect to its activities under the Contract;
- (c) ensure that its employees, agents, contractors and other Users use the Software and the Portal in accordance with the Contract and the Customer shall be responsible for their breach of the Contract;
- (d) ensure that its equipment and network systems comply with the relevant specifications supplied by IHM from time to time;
- (e) be solely responsible for procuring and maintaining its equipment and network connections and telecommunications links to be able to use the Software and the Portal, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's equipment, network connections or telecommunications links or caused by the internet;
- (f) ensure that its equipment shall comply with any hardware and software specifications as IHM may specify from time to time; and
- (g) read, understand and implement the Food Information Conditions as required in relation to its use and/or management of the Software, the Portal and the Services under the Contract and acknowledges and accepts that IHM has no responsibility in relation to compliance with the Food Information Conditions outlined in this Contract
- (h)

11. IHM 'S UNDERTAKINGS

11.1 If, within 12 months from the signing of the Contract, the Customer notifies IHM in writing of any defect or fault in the Software and/or the Portal and such defect or fault does not result from i) the Customer, or anyone acting with the authority of the Customer, having amended the Software and/or the Portal or used it outside the terms of the Contract for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by IHM or ii) the Software not having been loaded onto IHM-specified or suitably configured equipment, IHM may examine the Software and/or Portal and determine (acting reasonably) whether they are defective or faulty and, upon finding that the Software and/or Portal are defective or faulty shall, at IHM 's option, do one of the following:

- (a) repair the Software; or
- (b) replace the Software; or
- (c) use all reasonable commercial endeavours to correct any such non-conformance relating to the Portal; or
- (d) terminate the Contract immediately by notice in writing to the Customer and refund the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist IHM in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable IHM to re-create the defect or fault.

11.2 IHM does not warrant that the use of the Software and the Portal will be uninterrupted or error-free.

11.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software, Portal and Documentation have not been developed to meet the individual requirements of the Customer.

- 11.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 11.5 The Contract shall not prevent IHM from entering into similar agreements with third parties or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

12. LIMITS OF LIABILITY

12.1 Subject to clause 12.3:

- (a) IHM shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage, even if IHM was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits, sales or business;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill;
 - (vi) loss or corruption of software, data or information;
 - (vii) losses arising from any delays, delivery failures, or any other loss resulting from the Customer's equipment or the transfer of data over communications networks and facilities (including the internet);
 - (viii) losses resulting from the use of the Portal by the Customer and from conclusions drawn from such use;
 - (ix) any losses outlined in clause 12.2; or
 - (x) any losses which may arise from the Customer's use of any links to access third party websites or resources provided by third parties which links may be featured in the Portal from time to time

provided that this clause 12.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 12.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (x) inclusive of this clause 12.1(a);

- (b) the total and aggregate liability of IHM, whether in contract, tort (including negligence) or otherwise and whether in connection with the Contract or any collateral contract, shall in no circumstances exceed a sum paid by the Customer under the Contract in the twelve months immediately preceding the initial breach.

- 12.2 The Customer acknowledges that the Software and the Portal may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties and that it does so solely at its own risk. IHM makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not IHM. IHM recommends that the Customer refers to the third party's website terms and conditions, privacy policy and terms and conditions for the supply of goods. IHM does not endorse

or approve any third-party website nor the content of any of the third-party website made available via the Software and/or Portal.

- 12.3 Nothing in the Contract shall (in relation to any act or omission by IHM):
- (a) limit or exclude any liability for death or personal injury caused by the negligence of IHM, its officers, employees, contractors or agents;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in a way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 12.4 All dates and times for the performance of IHM's obligations under the Contract shall be treated as approximate only. IHM shall not in any circumstances be liable for any loss or damage arising from any delay beyond such approximate dates and/or times.
- 12.5 The Customer acknowledges that the Customer's breach of the terms of the Contract may place IHM in contractual breach with third parties. The Customer indemnifies and holds harmless IHM from and against all claims, proceedings, damages, losses and costs (including reasonable legal costs) arising out of any claim by any third party resulting from any breach of the Customer's obligations under the Contract or out of or in connection with the Customer's use of the Software, Portal and/or Documentation.
- 12.6 All references to "IHM" in this clause 12 shall, for the purposes of this clause and clause 19 (Third Party Rights) only, be treated as including all employees, subcontractors and suppliers of IHM and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 19.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Customer acknowledges all Intellectual Property Rights in the Software, the Portal, the Documentation and any Maintenance Releases belong and shall belong to IHM and/or its licensors, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Contract. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, patents, copyright, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Portal or the Documentation. The Customer indemnifies IHM for any losses and damages IHM may incur arising the Customer's use of IHM's Intellectual Property Rights, the Software, the Portal or the Documentation otherwise than in accordance with the Contract.
- 13.2 IHM confirms that it has all the rights in relation to the Software, the Portal and the Documentation that are necessary to grant all the rights IHM purports to grant under and in accordance with the terms of the Contract.
- 13.3 If any claim is made against the Customer alleging that the possession or use of the Software or the Portal in accordance with the terms of the Contract infringes the UK Intellectual property Rights of a third party, IHM may at its sole option and expense:
- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of the Contract;
 - (b) modify the Software so that it ceases to be infringing (where IHM has the authority to do so);
 - (c) replace the Software with non-infringing software; or
 - (d) terminate the Contract immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if IHM modifies or replaces the Software, the modified or replacement Software must have materially the same functionality as the Software and/or the Portal and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of the Contract been references to the date on which such modification or replacement was made.

- 13.4 Notwithstanding any other provision in the Contract, clause 13.3 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software or through the breach of any third-party terms by the Customer.
- 13.5 This clause 13 constitutes the Customer's exclusive remedy and IHM's only liability in respect of any claims outlined in clause 13.3 and, for the avoidance of doubt, is subject to clause 12 (Limits of Liability).

14. COMMENCEMENT, DURATION AND TERMINATION

- 14.1 The Contract shall commence on the Commencement Date and shall remain in force for the Initial Term. Unless terminated in accordance with clause 14.2, the Contract shall automatically extend for one year ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term.
- 14.2 Either party may terminate the Contract by giving the other party notice in writing not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be. No notice to terminate the Contract shall take effect during the Initial Term.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment;
 - (b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(c) to clause 14.3(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

14.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.5 On termination for any reason:

- (a) all rights and licences granted to the Customer under the Contract shall cease;
- (b) the Customer shall cease all activities authorised by the Contract including use of the Software, the Portal and the Documentation;
- (c) the Customer shall immediately pay to IHM any sums due to IHM under the Contract; and
- (d) the Customer shall immediately destroy or return to IHM (at IHM's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to IHM that it has done so.

14.6 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract including the Order Form, clause 1 (Interpretation), clauses 3.4 and 3.5 (Licence and Portal Access) clause 7 (Confidentiality and Publicity), clause 8 (Export), clause 11 (except clause 11.1) (IHM's Undertakings), clause 12 (Limits of Liability), clause 13.1 (Intellectual Property), this clause 14 (Commencement, Duration and Termination), clause 15 (Waiver), clause 16 (Remedies), clause 17 (Severance), clause 19 (Third-party Rights), clause 20 (No Partnership or Agency) and clause 23 (Governing Law and Jurisdiction) of these Conditions.

15. WAIVER

15.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. REMEDIES

16.1 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

17.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. COUNTERPARTS

18.1 The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. THIRD-PARTY RIGHTS

19.1 Except where expressly permitted under the Contract, a person who is not a party to the Contract shall not have the right to enforce any term of the Contract.

19.2 It is agreed that the Contract is intended to confer a benefit on IHM and its Affiliates by making the exclusions and limitations of liability available to them, provided that the rights of such Affiliates under the Contract shall only be enforceable by the Customer on their behalf. IHM will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.

20. NO PARTNERSHIP OR AGENCY

20.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. FORCE MAJEURE

21.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (such as the failure of any communications networks including the internet or any other failure of communications facilities). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

22. NOTICES

22.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

22.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

23. GOVERNING LAW AND JURISDICTION

23.1 Without prejudice to either party's right to bring proceedings to seek interim or interlocutory remedies or commence proceedings before the expiry of a limitation period, the parties will attempt to resolve in good faith any dispute arising out of or in relation to the Contract by negotiations between a director of each party with authority to settle the relevant dispute. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2 The parties irrevocably agree that the courts of the jurisdiction of the Customer's Business Address (as defined in the Order Form) shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

This is the Schedule to the foregoing Conditions between IHM and the Customer

**SCHEDULE
FOOD INFORMATION CONDITIONS**

IMPORTANT INFORMATION: FOOD INFORMATION (Including NUTRITIONAL ANALYSIS AND ALLERGY INFORMATION)

IHM does not produce or manufacture any food, beverages or other foodstuffs (“**Goods**”) and does not create or produce any of the information relating to any Goods featured from time to time on the Software or the Portal, any reports, menus or recipes generated using the Software or the Portal (together known as “**Documents**”) and on the packaging of any Goods.

IHM EXCLUDES ANY AND ALL LIABILITY TO THE FULLEST EXTENT PERMITTED BY LAW IN RESPECT OF:

- (1) ANY AND ALL INFORMATION RELATED TO ANY (A) GOODS FEATURED WITHIN THE SOFTWARE OR THE PORTAL AND/OR (B) ANY DOCUMENTS AND/OR (C) THE PACKAGING, LABELLING AND CONTAINERS FOR ANY GOODS (“FOOD INFORMATION”). IHM DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION CONCERNING THE FOOD INFORMATION RELATING TO ANY GOODS, INCLUDING BUT NOT LIMITED TO THE ACCURACY AND COMPLETENESS OF ANY SUCH FOOD INFORMATION;**
- (2) ANY INFORMATION WHICH IS PROVIDED TO END USERS OF ANY FOOD, BEVERAGES OR OTHER FOODSTUFFS ON THE BASIS OF THE FOOD INFORMATION;**
- (3) THE DOCUMENTS, ANY GOODS AND/OR THE FOOD, BEVERAGES OR OTHER FOODSTUFFS PREPARED USING ANY GOODS MEETING ANY OBLIGATIONS OR STANDARDS, FOR EXAMPLE DIETARY REFERENCE VALUES OBLIGATIONS TO WHICH THE CUSTOMER MAY BE SUBJECT;**
- (4) THE COMPOSITION, ALLERGENS PRESENT IN AND NUTRITIONAL VALUES OF ANY FOOD, BEVERAGES OR OTHER FOODSTUFFS PREPARED USING THE DOCUMENTS AND/OR ANY OF THE GOODS**

AND THE CUSTOMER ACCEPTS THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IHM HAS NO LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY IN CONNECTION WITH THE ABOVE MATTERS.

Customer obligations:

The Customer:

- Is wholly responsible for complying with its obligations under the Food Information Regulations 2014 and the Food Information (Scotland) Regulations 2014 and all other applicable laws;
- shall ensure that a qualified dietician analyses any Documents generated by the Software and/or the Portal in order to ensure that the Food Information in such Documents is accurate and complete and that the Goods, menus and any food, beverages or other foodstuffs prepared using the Documents and/or any of the Goods are suitable for the end users i.e. the consumers;
- shall input the correct and relevant dietary reference values in the Software and the Portal and check regularly that the correct and up-to-date reference values are being used;

- shall update the relevant recipes within the Software and the Portal to reflect any change in the Goods or ingredients used to prepare the food, beverages and other foodstuffs (including any changes in quantities or where the ordered ingredient is not available and a replacement ingredient is supplied);
- shall check the packaging, labelling and any other information displayed on any Goods when they are received (particularly in respect of any substitute items);
- shall match the Goods delivered correctly with the food, beverages and foodstuffs featured within the Software and the Portal; and
- shall prepare all food, beverages and other foodstuffs in accordance with the Documents.